

## Employment and Training Administration, Labor

§ 654.400

### § 654.10 Transition provisions.

The annual list of labor surplus areas for the period June 1, 1982, through May 31, 1983, shall be extended through September 30, 1983.

[48 FR 15616, Apr. 12, 1983]

### Subpart B—Responsibilities Under Executive Order 10582

AUTHORITY: 41 U.S.C. 10a *et seq.*; 29 U.S.C. 49 *et seq.*; 15 U.S.C. 644(n); E.O. 12073, E.O. 10582 as amended by E.O. 11051 and 12148.

#### § 654.11 Purpose of subpart.

This subpart implements the responsibilities of the Secretary of Labor in determining areas of substantial unemployment in accordance with Executive Order 10582 issued pursuant to the Buy American Act, 41 U.S.C. 10a *et seq.*

#### § 654.12 Description of Executive Order 10582.

(a) Under the Buy American Act, heads of executive agencies are required to determine, as a condition precedent to the purchase by their agencies of materials of foreign origin for public use within the United States, (1) that the price of like materials of domestic origin is unreasonable, or (2) that the purchase of like materials of domestic origin is inconsistent with the public interest.

(b) Section 3(c) of Executive Order 10582 issued pursuant to the Buy American Act permits executive agencies to reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier, offering the lowest price for furnishing the desired materials, undertakes to produce substantially all of the materials in areas of substantial unemployment, as determined by the Secretary of Labor.

#### § 654.13 Determination of areas of substantial unemployment.

An area of substantial unemployment, for purposes of Executive Order 10582, shall be any area classified as a labor surplus area at § 654.5 of this part pursuant to the procedures set forth at subpart A of this part.

### § 654.14 Filing of complaints.

Complaints arising under subpart B of this part alleging that the Department of Labor has violated the labor surplus area regulations shall be made pursuant to the procedures set forth at § 654.9 of this part.

[48 FR 15616, Apr. 12, 1983]

### Subparts C–D [Reserved]

### Subpart E—Housing for Agricultural Workers

AUTHORITY: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

SOURCE: 45 FR 14182, Mar. 4, 1980, unless otherwise noted.

#### PURPOSE AND APPLICABILITY

#### § 654.400 Scope and purpose.

(a) This subpart sets forth the Employment and Training Administration standards for agricultural housing. Local Job Service offices, as part of the State employment service agencies and in cooperation with the United States Employment Service, assist employers in recruiting agricultural workers from places outside the area of intended employment. The experiences of the employment service indicate that employees so referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State employment service system, as set forth in § 653.108 of this chapter, to deny its intrastate and interstate recruitment services to employers until the State employment service agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.108 of this chapter provides that recruitment services shall be denied unless the employer has signed an assurance, a preoccupancy inspection has been conducted and the ES staff has ascertained that, with respect to intrastate clearance, if the workers are to be housed, the employer's housing meets or, with respect to interstate clearance, that the employer will provide housing for the workers which meets either the full set of standards

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set forth at 29 CFR 1910.142 or the full set of standards set forth in this subpart. Whichever is applicable under the criteria set forth in § 654.401; except that for mobile range housing for sheepherders, the housing shall meet existing Departmental guidelines.

[45 FR 14182, Mar. 4, 1980; 45 FR 22901, Apr. 4, 1980]

### § 654.401 Applicability; transitional provisions.

(a) Employers whose housing was constructed in accordance with the ETA housing standards may continue to follow the full set of ETA standards set forth in this subpart only where prior to April 3, 1980 the housing was completed or under construction, or where prior to March 4, 1980 a contract for the construction of the specific housing was signed.

(b) To effectuate these transitional provisions, agricultural housing to which this subpart applies and which complies with the full set of standards set forth in this subpart shall be considered to be in compliance with the Occupational Safety and Health Administration temporary labor camp standards at 29 CFR 1910.142.

### § 654.402 Variances.

(a) An employer may apply for a permanent, structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local Job Service office serving the area in which the housing is located. This application must be filed by June 2, 1980 and must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local Job Service of-

fice shall send the request to the State office which, in turn, shall forward it to the Regional Administrator, Employment and Training Administration (RA). The RA shall review the matter and, after consultation with OSHA, shall either grant or deny the request for a variance.

(c) The variance granted by the RA shall be in writing, shall state the particular standard(s) involved, and shall state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA shall send the approved variance to the employer and shall send copies to the Regional Administrator of the Occupational Safety and Health Administration, the Regional Administrator of the Employment Standards Administration, and the appropriate State agency and the local Job Service office. The employer shall submit and the local Job Service office shall attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA shall provide written notice stating the reasons for the denial to the employer, the appropriate State agency and the local Job Service office. The notice shall also offer the employer an opportunity to request a hearing before a DOL Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing shall be handled in accordance with the employment service complaint procedures set forth at §§ 658.421 (i) and (j), 658.422 and 658.423 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section shall only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404–654.417 of this subpart.

### § 654.403 Conditional access to the intrastate or interstate clearance system.

(a) *Filing requests for conditional access*—(1) “Noncriteria” employers. Except as provided in paragraph (a)(2) of